

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 07-81
Fees for Fiscal Year 2007)	
)	

To: The Commission

**REPLY COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or the “Alliance”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, respectfully submits its reply comments in the above-entitled proceeding.¹ This proceeding represents the Commission’s annual proposal for recalibration of the regulatory fees it imposes on each category of licensee that is subject to regulatory fee payment obligations. For the reasons described below, it is EWA’s opinion that the FCC’s proposed increases in Private Land Mobile Radio Service (“PLMRS”) regulatory fees are inconsistent with the resources devoted to this licensee category. Absent Commission justification for the proposed change, EWA urges the FCC to modify its proposal to maintain, or preferably even reduce, the annual PLMRS regulatory fees that are applicable to PLMRS.

I. INTRODUCTION

EWA represents a broad alliance of business enterprise users, wireless communication service providers and technology manufacturers, many of which hold licenses in the Part 90 radio services. While many of these members also utilize spectrum regulated under other FCC

¹ See In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Notice of Proposed Rulemaking, MD Docket No. 07-81 (rel. April 18, 2007) (“NPR”).

rules, both licensed and unlicensed, the spectrum authorized under Part 90 typically represents the core of their communications facilities. For this reason, EWA's members are impacted significantly by the FCC's proposal to increase the annual PLMRS regulatory fee.

II. DISCUSSION

Since 1993, the Commission has been directed by Congress to collect from Commission constituents an annual regulatory fee intended to recover costs incurred by the FCC in regulating the affected categories of communications users.² Specifically, the regulatory fees are designed to recoup costs associated with FCC enforcement, policy and rulemaking, user information and international activities. To effectuate this Congressional directive, the Commission each year analyzes the regulatory activities it anticipates conducting over the upcoming twelve months with respect to each user class, estimates the number of users within the class, and thereby calculates the annual regulatory fee to be imposed on each.³

Since the inception of this program, there has been an alarming upward trend in PLMRS regulatory fees. While the annual per license payment remains relatively low, the Commission has consistently increased the fees for this category of user and, in particular, for those PLMRS users deemed to have "exclusive" channel assignments, by substantial percentages. Thus, the PLMRS exclusive use license obligation quadrupled from its \$5 level in 2001 to the 2006 fee of \$20. The regulatory fee for users of shared use licenses has doubled during that period, growing from \$5 in 2001 to \$10 in 2006. Throughout this period, the record supporting these increases has been, at best, scanty.

The instant NPR now proposes to increase these fees in 2007 to \$35 for exclusive use licenses and \$15 for shared use licenses. This represents another 75% increase for the former

² 47 U.S.C. § 159(a).

³ NPR at ¶¶ 4-6.

category and a 50% increase for the latter. The result would be a sevenfold increase for exclusive use PLMRS licenses in less than seven years and a quadrupling of the fee for those with shared use licenses. Proposed increases of this magnitude presumably could be justified only by evidence either of substantial increases in the FCC's regulatory work associated with these licensee classes or by an extraordinary decrease in the number of licenses within these categories over which the regulatory costs may be spread.⁴ However, the NPR is effectively silent on the basis for its proposed PLMRS regulatory fees. In fact, the only specific information provided with respect to this user category (other than the proposed fee increase) is found in Attachment B of the NPR where the Commission acknowledges that its estimates of the payment unit estimates, that is, the number of potential payment triggering applications, for all land mobile, including PLMRS, comes from Wireless Telecommunication Bureau projections. Thus, EWA cannot divine from the NPR on what basis the FCC believes these increased fees are warranted. Surely, however, the higher fees cannot be predicated on anticipated increased regulatory costs associated with PLMRS matters.

The fees in question typically are associated with PLMRS applications for VHF, UHF, 470-512, 800 and 900 MHz frequencies.⁵ Until recently, these services were regulated within the Public Safety and Critical Infrastructure Division ("PSCID") of the FCC's Wireless Telecommunications Bureau ("WTB") and included both Industrial/Business and Public Safety licensees. However, last year the FCC created the Public Safety/Homeland Security Bureau

⁴ EWA notes that the latter, even if accurate, would not constitute a basis for a concomitant increase in regulatory fees for the remaining licensees. For example, the NPR notes that the FCC has maintained the CMRS Messaging regulatory fee at its FY 2002 rate "**to account** for the messaging industry's declining subscriber base." NPR at ¶ 7 (emphasis added). The Commission could not properly treat the PLMRS user community differently by relying on that same factor as justification for a fee increase.

⁵ Actually, it is only a subsection of PLMRS users that pay regulatory fees since public safety licensees are exempt from this payment obligation. Further, given licensing "freezes" within both the 800 MHz and 900 MHz bands, it can be reasonably anticipated that there will be little regulatory activity in these bands for the foreseeable future for PLMRS eligible licensees. Moreover, the 470-512 MHz band is available in only eleven markets in the country, as it has been for decades. Since the band is saturated it does not generate a significant level of regulatory activity.

(“PSHSB”) into which it moved all policy and licensing activities associated with public safety entities.

Thereafter, the FCC eliminated the PSCID and moved the licensing and policy work associated with Industrial/Business Part 90 PLMRS users into the existing Mobility Division of the WTB, a division already charged with responsibility for cellular, PCS, paging and other mobile wireless services. Most of the PSCID staff was assigned to the new PSHSB, with only a relatively small number of persons redeployed within the Mobility Division with continued responsibility for non-public safety PLMRS activities. In fact, because of the lack of publicly available information about WTB staff responsibilities, EWA cannot be certain whether even those individuals remain dedicated to Part 90 PLMRS matters, or whether they have assumed responsibilities associated with other Mobility Division user categories as well.

The relative paucity of rulemaking activities associated with Industrial/Business Part 90 PLMRS licensees also calls into question the Commission’s proposed increase in regulatory fees. The FCC has not allocated additional spectrum for these users since the mid-1980s and policy proceedings affecting this licensee category have been few and far between. Particularly, by contrast, with the regulatory efforts devoted to broadband Commercial Mobile Radio Service (“CMRS”), public safety and broadcast licensees, it is difficult to imagine that the Commission’s Part 90 Industrial/Business PLMRS rule making activities would warrant one-year regulatory fee increases of 75% and 50%, depending on whether the authorized frequencies are assigned on an exclusive or shared basis.

The Commission also must be mindful of the impact of increased regulatory fees that are assessed on a per license (call sign) basis, as they are in this instance, when the FCC’s regulatory framework for the services dictate that licensees often must acquire multiple individual

authorizations. Part 90 PLMRS frequencies, almost without exception, are authorized on a site-specific basis. That means that each frequency must be licensed for each set of coordinates at which it is proposed to be used, and the FCC rules limit a Part 90 authorization to no more than six fixed locations on each license. This is in contrast to services such as cellular and PCS, where spectrum is assigned in blocks over relatively large geographic areas, and all frequencies may be utilized anywhere within the defined geographic area, all under a single call sign. Thus, a PLMRS entity using Part 90 frequencies at multiple locations may require a substantial number of individual FCC licenses to provide the necessary licensing authority. While the FCC's Universal Licensing System has vastly improved the licensing process and has automated many functions that used to be performed by individuals, presumably thereby reducing the resources needed to manage the Part 90 PLMRS licensing work, ULS was not intended to reduce and has not reduced the number of individual authorizations needed by PLMRS users or the regulatory fees associated with those licenses.

In fact, there is a striking dissimilarity in the treatment of PLMRS versus CMRS licensees with respect to regulatory fees. PLMRS licensees, for the most part, are operators of private, internal radio systems that use radios to support critical business, industrial, land transportation and other activities. These types of PLMRS licensees do not own and operate wireless facilities for the purpose of generating business revenues derived from shared communication facilities for which users pay monthly airtime fees, but rather rely on their communication systems to improve the efficiencies of their primary business operations, including employee safety. Thus, as their communications requirements increase, their costs increase as well and are not defrayed by an offsetting revenue stream. These costs include the

additional regulatory fee obligations they incur when they must acquire additional licenses under the FCC's site-based licensing approach.

By contrast, CMRS regulatory fees are pegged directly to increased revenue. The fee is calculated on a per-subscriber unit basis; the more subscribers the licensee serves, the greater its regulatory fee obligations. However, those fee increases are offset by a commensurate revenue stream. While EWA does not challenge the methodology the FCC has adopted to assess CMRS regulatory fees, these dissimilar approaches may work to the disadvantage of the PLMRS user community.

For these reasons, EWA requests that the FCC refrain from adopting its 2007 proposed Part 90 PLMRS regulatory fee increase until it has made public a detailed analysis that supports the new fees. The PLMRS industry, including but not limited to EWA and its members, should have an opportunity to review and potentially challenge the assumptions on which these fee increases of 75% and 50%, respectively, were based. In light of the reduced Commission staff with primary responsibility for Industrial/Business Part 90 PLMRS activities and the minimal rulemaking activity in respect to these services in recent years, EWA must question whether the FCC's calculations accurately represent the regulatory costs associated with this category of Commission user.

III. CONCLUSION

The Commission has proposed an unprecedented and unsupported increase in the 2007 regulatory fees for Industrial/Business PLMRS users. EWA is unaware of any regulatory work undertaken or to be undertaken by the FCC that would justify such an extraordinary level of fee increases. Unless and until the FCC has made available the data on which it based its proposal, it is not possible for the industry affected by these extraordinary fee increases to evaluate whether

or not they have been assessed properly. Thus, the proposed changes must be held in abeyance until that data has been made available and the industry has had a reasonable opportunity to consider and provide the Commission with an appropriate assessment.

Respectfully submitted,

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